

REMARKS

In the outstanding Official Action, the Examiner:

- (1) indicated that the specification should be updated to provide the most current status of the parent application;
- (2) rejected claim 39 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Russian Patent No. 1,727,802;
- (3) rejected claim 39 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sluijter et al. (5,571,147); and
- (4) rejected claim 39 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 39 of U.S. Patent No. 6,613,044.

In response to Item (1) above, Applicant has amended the specification to include the U.S. Patent Number of the parent application.

In response to items (2), (3) and (4) above, Applicant has amended claim 39 in the same manner as claim 39 was amended in the parent case in order to distinguish it from the prior art. In addition, Applicant has also further amended claim 39 to specify that the cryogenic energy is delivered to the endplate of the vertebral body. The features introduced by these amendments are not taught by any of the references cited by the Examiner. Thus, Applicant believes that these amendments are sufficient to overcome the rejections set forth by the Examiner with respect to the original form of claim 39.

Applicant believes that claim 39 is now in condition for allowance and allowance thereof is respectfully requested.

In the event that any additional fees may be required in this matter, please charge the same to Deposit Account No. 16-0221.

Thank you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Margaret M. Slezak', with a stylized flourish at the end.

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